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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 BRIAN BORENSTEIN, an individual,

18 Plaintiff,

19 vs.

20 THE ANIMAL FOUNDATION, a domestic
21 nonprofit corporation; *et al.*

22 Defendants.
23
24

Case No.: 2:19-cv-00985-APG-DJA

**AMENDED STIPULATION AND
[PROPOSED] ORDER TO AMEND
SCHEDULING ORDER**

(First Request)

25 COME NOW Plaintiff, Brian Borenstein, by and through his counsel, Raelene K.
26 Palmer, Esq. of The Palmer Law Firm, P.C., and Robert S. Melcic, Esq., and Defendants, The
27 Animal Foundation and Carly Scholten, by and through their counsel, Kerry E. Kleiman, Esq.,
28 of the law firm Reid Rubinstein & Bogatz, County of Clark and Victor Zavala, by and through

their counsel, Jonathan D. Blum, Esq., of the law firm Wiley Petersen, and Sunrise Hospital and Medical Center, by and through its counsel, Joshua M. Dickey, Esq., of the law firm Bailey Kennedy, and herein file their *Amended Stipulation and Proposed Order to Amend Scheduling Order (First Request)*.

I. STIPULATION

A. Recitals

1. WHEREAS this is the first stipulation for extension of time to amend the *Scheduling Order*, (including to extend the discovery cut-off and deadlines calculated or triggered by the discovery cut-off, i.e., expert-disclosure deadlines, rebuttal-expert-disclosure deadlines, dispositive-motion deadlines, and *Joint-Pretrial-Order* deadlines);
2. WHEREAS this stipulation for modification of the *Scheduling Order* is filed prior to the running of the deadlines affected by this stipulation (discovery cut-off, expert-disclosure deadlines, rebuttal-expert-disclosure deadlines, dispositive-motion deadlines, and *Joint-Pretrial-Order* deadlines);
3. WHEREAS the parties have conducted written discovery, as follows:
 - a. Plaintiff's Discovery:
 - *Plaintiff's Initial Disclosures, under Rule 26*, producing documents bates stamped **PLF00001-00206**;
 - *Plaintiff's Request for Production of Documents to Defendant The Animal Foundation (Set No. 1, Nos. 1-3)*;
 - *Plaintiff's Request for Production of Documents to Defendant Clark County (Set No. 1, Nos. 1-3)*;
 - *Plaintiff's Request for Production of Documents to Defendant Sunrise Hospital and Medical Center (Set No. 1, Nos. 1-4)*;
 - *Plaintiff's First Set of Interrogatories to Defendant The Animal Foundation (Set No. 1, Nos. 1)*;
 - *Subpoena to Produce Documents, Information, or Objects in a Civil*

Action to Defendant Sunrise Hospital and Medical Center (Item Nos. 1-5);

- *(Revised) Subpoena to Produce Documents, Information, or Objects in a Civil Action to Defendant Sunrise Hospital and Medical Center (Item Nos. 1-4);*
- *Plaintiff's Response to Defendant The Animal Foundation's First Set of Requests for Production of Documents (Nos. 1-27); producing documents bates stamped **PLF00207-00223**;*

b. Defendant The Animal Foundation

- *Defendants The Animal Foundation and Carly Scholten's Initial Disclosures, under Rule 26, producing documents bates stamped **TAF000001-000131**;*
- *Defendant The Animal Foundation's Responses to Plaintiff's First Set of Requests for Production of Documents;*
- *Defendant The Animal Foundation's Responses to Plaintiff's First Set of Interrogatories;*

c. Defendant Carly Scholten

- *Defendants The Animal Foundation and Carly Scholten's Initial Disclosures, under Rule 26, producing documents bates stamped **TAF000001-000131**;*

d. Defendant County of Clark

- *Defendant County of Clark's Initial Disclosures, under Rule 26, producing documents bates stamped **CC 000001-000565**;*
- *Defendant County of Clark's Response to Plaintiff's Request for Production of Documents, producing documents bates stamped **CC 000001-000101**;*

e. Defendant Sunrise Hospital and Medical Center, LLC

- *Sunrise Hospital and Medical Center, LLC's Response to Plaintiff's*

(Revised) *Subpoena to Produce Documents, Information, or Objects in a Civil Action*; producing documents bates stamped **SUNRISE000001-000914**;

4. WHEREAS discovery could not be completed within the time limits set by the current discovery plan, as set forth as follows:

- a. Plaintiff filed a *Second Amended Complaint* (“SAC”) on August 23, 2021;
- b. Defendant Sunrise Hospital and Medical Center, LLC filed a *Motion to Dismiss SAC*, which was fully briefed on October 26, 2021;
- c. Defendants, County of Clark and Victor Zavala, filed a *Motion to Dismiss SAC*, which was fully briefed on October 12, 2021;
- d. Defendants, The Animal Foundation and Carly Scholten, filed a *Motion to Dismiss SAC & Renewed Special Anti-SLAPP Motion to Dismiss Under NRS 41.637*, which was fully briefed on November 12, 2021;
- e. The Court’s ruling on the motions will impact the claims and defenses of the defendants who remain the litigation; as such, with the claims and defenses still in flux, the parties have not begun taking depositions and conducting additional written discovery;¹
- f. It is anticipated that the surviving parties will want to participate in any depositions that might be taken against the currently named parties, such that it would not be prudent to schedule those depositions at this time; and
- g. The parties still need to provide, supplement, and/or amend their initial disclosures, conduct more written discovery, and take the depositions of all witnesses, including any expert witnesses who might be disclosed;

5. WHEREAS the current *Scheduling Order* (ECF No. 147) requires that discovery must end not later than Friday, March 11, 2022, but this deadline will need to be extended;

¹ The parties are not seeking to stay discovery. However, Sunrise Hospital and Medical Center, LLC reserves its right to move to stay discovery, and the other parties do not waive their rights to join or oppose any such motion.

6. WHEREAS the following deadlines are based on or triggered by the discovery-cut-off, and will also need to be extended: (a) the amending of any pleadings and the adding of any parties; (b) the making of any expert disclosures and rebuttal expert disclosures; (c) the filing of any dispositive motions; and (d) the filing of a joint pretrial order.

B. Proposed Schedule for Completing Remaining Discovery

THEREFORE, the parties herein stipulate to jointly petition the Court, and they hereby do, to amend the *Scheduling Order*, by adding six (6) months to the Discovery Cut-Off deadline that is currently in effect and the deadlines triggered by the close of discovery, such that:

1. The Discovery Cut-Off shall be extended by six months, from Friday, March 11, 2022, to **Monday, September 12, 2022;**²
2. The Deadline to Amend the Pleadings and Add Parties shall be extended from Monday, December 13, 2021, to ninety (90) days prior to the proposed, extended close of discovery, which date is **Tuesday, June 14, 2022;**
3. The Deadline for the Disclosure of Direct Experts shall be extended from Monday, January 10, 2022, to sixty (60) days prior to the proposed, extended close of discovery, which date is **Thursday, July 14, 2022;**
4. The Deadline for the Disclosure of Rebuttal Experts shall be extended such that the disclosure of rebuttal experts and their reports shall occur within thirty (30) days after the date on which the corresponding primary or direct expert disclosures are made, as before; *i.e.*, the rebuttal expert deadline shall be extended from the latest possible date of Wednesday, February 9, 2022, to the latest possible date of **Monday, August 15, 2022;**³

² Six months after March 11, 2022, will occur on Sunday, September 11, 2022. Pursuant to FRCP 6(a)(1)(C), this deadline rolls forward until the next court business day, which is the date cited here, Monday, September 12, 2021.

³ The thirtieth day after the proposed primary or direct expert disclosure deadline will occur on August 13, 2022, which is a Saturday. Pursuant to FRCP 6(a)(1)(C), this deadline rolls forward until the next court business day, which is the date cited here, Monday, August 15, 2022.

1 5. The Deadline to file Dispositive Motions shall be extended from Monday, April 11,
2 2022, to thirty (30) days after the proposed, extended date for the close of discovery,
3 which date is **Wednesday, October 12, 2022**; and

4 6. The Deadline to file a Joint Pretrial Order shall be extended from Wednesday, May
5 11, 2022, to thirty (30) days after the proposed, extended date for filing dispositive
6 motions, which date is **Monday, November 14, 2022**,⁴ or thirty (30) days after the
7 Court issues its order ruling on the final dispositive motion(s), if any.

8 In compliance with Local Rule ("LR") IA 6-1, the reasons for requesting the extension
9 of time for the deadlines of an amended scheduling order are stated *supra*, at § I (A), ¶¶ 3-12,
10 and good cause is provided, therefor, in accordance with LR 26-3. This is the first request for
11 such an extension of time, and this stipulation is not offered for any dilatory or improper
12 purpose.

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27 ⁴ The thirtieth day after the proposed extended date for filing dispositive motions will
28 occur on November 11, 2022, which is a Friday, as well as a holiday. Pursuant to FRCP
6(a)(1)(C), this deadline rolls forward until the next court business day, which is the date cited
here, Monday, November 14, 2022.

DATED this 22nd day of November 2021.

THE PALMER LAW FIRM, P.C.

Electronic Signature Authorized

By: / s / **Raelene K. Palmer**

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Attorneys for Plaintiff, Brian Borenstein

DATED this 22nd day of November 2021.

REID RUBINSTEIN & BOGATZ

Electronic Signature Authorized

By: / s / **Kerry E. Kleiman**

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Attorneys for Defendants, The Animal Foundation and Carly Scholten

DATED this 22nd day of November 2021.

WILEY PETERSEN

Electronic Signature Authorized

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Attorneys for Defendants, County of Clark and Victor Zavala

DATED this 22nd day of November 2021.

BAILEY KENNEDY

Electronic Signature Authorized

By: / s / **Joshua M. Dickey**

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Attorneys for Defendant, Sunrise Hospital and Medical Center, LLC

ORDER

THE COURT, having considered the preceding Stipulation and GOOD CAUSE appearing therefor, GRANTS the Stipulation. IT IS HEREBY ORDERED that the *Scheduling Order* shall be modified as follows:

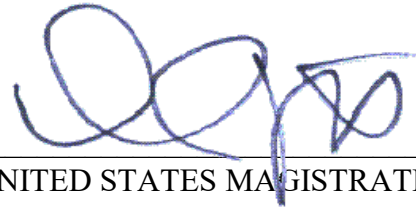
1. The Discovery Cut-Off shall be extended by six months, from Friday, March 11, 2022, to **Monday, September 12, 2022**;
2. The Deadline to Amend the Pleadings and Add Parties shall be extended from Monday, December 13, 2021, to **Tuesday, June 14, 2022**;
3. The Deadline for the Disclosure of Direct Experts shall be extended from Monday, January 10, 2022, to **Thursday, July 14, 2022**;

- 1 4. The Deadline for the Disclosure of Rebuttal Experts shall be extended from
- 2 Wednesday, February 9, 2022, to **Monday, August 15, 2022**;
- 3 5. The Deadline to file Dispositive Motions shall be extended from Monday, April 11,
- 4 2022, to **Wednesday, October 12, 2022**; and
- 5 6. The Deadline to file a Joint Pretrial Order shall be extended from Wednesday, May
- 6 11, 2022, to **Monday, November 14, 2022**.

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8 DATED: November 23, 2021.

IT IS SO ORDERED

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UNITED STATES MAGISTRATE JUDGE